# TRANSCRIPT OF RECORD.

## SUPREME COURT OF THE UNITED STATES.

No. ~~237~~ 30

JOHN L. VAN REYNEGAN, JONATHAN BICKERSTAFF, R. S. BROWN, DAVID CLINGAN, JAMES CUMMINGS, PETER GARDENER, LOUIS DENOS, FRANCISCO AUGENETTI, MART. TIERNEY, EDWARD WARMOUTH, AND VICTOR GARNON, PLAINTIFFS IN ERROR,

vs.

JAMES C. BOLTON.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF CALIFORNIA.

FILED NOVEMBER 16, 1874.

# SUPREME COURT OF THE UNITED STATES.

## No. 237.

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1 *Complaint.*

In the circuit court of the United States for the northern district of California, tenth circuit.

JAMES CLINTON BOLTON, PLAINTIFF,
*vs.*
JOHN L. VAN REYNEGAN, JONATHAN BICKERSTAFF, R. S. Brown, David Clingan, James Cummings, Peter Dolan, Michael Dowd, Murt Tierney, Peter Gardner, Louis Denos, Francisco Angenett, José Albornos, Mary King, George Hansom, Philip Ray, Edward Wormouth, John Doe, Richard Roe, John Black, Peter Blue, and Geo. White, defendants.

The plaintiff, James Clinton Bolton, by Brooks & Whitney, his attorneys, complains of John L. Van Reynegan, Jonothan Bickerstaff, R. S. Brown, David Clingan, James Cummings, Peter Dolan, Michael Dowd, Murt Tierney, Peter Gardner, Louis Denos, Francisco Angenett, José
2 Albornos, Mary King, George Hansom, Philip Ray, Edward Wormouth, John Doe, Richard Roe, John Black, Peter Blue, and George White, defendants, the last five names being fictitious names, intended to designate certain defendants whose true names are unknown to plaintiff, and whose true names, when described, he prays may be here inserted.

And for cause of action he alleges:

That the plaintiff is a citizen and resident of the State of New York, and the defendants are citizens and residents of the State of California.

That on the twelfth day of August, 1865, the plaintiff was, and ever since has been, the owner in fee-simple absolute and entitled to the possession of that certain tract of land situate, lying, and being in the county of Marin, in said State of California, bounded and described as follows, to wit:

Commencing at the westerly corner of the Solar, on the creek called Corte de Madera del Presidio, near the old saw-mill at the foot of the hills and in the edge of the forest of redwoods, called Corte de Madera del Presidio; thence running north 28° east 162 chains to a laurel 24 inches in diameter, marked "P. Q. 99," a point in the survey of the rancho Punta de Quentin on the Arroyo Ho'on at the Corte de Madera
3 de San Pablo; thence following down the Arroyo Holon north 26¾° east 15 chains 10 links to a laurel 36 inches in diameter, marked "P. Q. 98;" thence north 17½° east 9 chains 55 links to a redwood, marked "P. Q. 97;" thence north 33° east 20 chains 20 links to the mouth of the Arroyo Holon; thence along the border of the marsh of San Francisco Bay, north 86° east, 5 chains 60 links; thence south 35¼° east 6 chains 80 links; south 46½° west 7 chains; south 86½° east 9 chains 60 links; north 79° east 13 chains 80 links; south 18° west 16 chains; south 69° east 17 chains 10 links; south 60½° east 10 chains 20 links; south 1¼° east 6 chains 70 links; south 42¼° west 7 chains; south 76° west 13 chains 90 links; south 30¼° west 14 chains 20 links; south 3°° east 5 chains 70 links; south 80½° east 37 chains; south 64¼° east 6 chains 60 links; south 69½° east 13 chains; south 52¾° east 11 chains 80 links; south 24¼° east 7 chains; north 72° east 5 chains; south 57° east 4 chains; south 40¾° west 12 chains; south 10¾°

east 25 chains 79 links, to post marked "C. M. P. No. 1;" then leaving the salt-marsh, south 21 chains 30 links; west, 40 chains; south, 20 chains; west, 60 chains; south, 20 chains; west, 40 chains; south, 2 chains 45 links, to the Arroyo Corte de Madera del Presidio; thence down said Arroyo, south 33¾° east, 5 chains 80 links; south 59¼° east 6 chains 40 links; south 41¾° east 24 chains 10 links to a laurel on the bank of the arroyo, 24 inches in diameter, marked "C. M. P. 177 S., 19;" thence south 9¼° west 7 chains 15 links to the Punta de Sansal; thence north 59¾° west 83 chains 63 links to the point of commencement, containing 2,038$\frac{56}{100}$ acres; being a portion of the rancho Corte de Madera del Presidio, which was granted to Juan Reid by the Mexican government, and of which juridical possession was delivered to him. The claim for which rancho, under said grant, was duly presented to the board of commissioners for the settlement of private land-claims in the State of California by the widow and heirs of the said Juan Reid, and which was duly confirmed by said board and the district court of the United States for the northern district of California, and for which no patent has as yet been issued.

That being so the owner and entitled to the possession of said tract of land, the said defendants on the 14th day of August, 1865, unlawfully and wrongfully entered upon the same and ousted the plaintiff therefrom, and from thence hitherto have unlawfully and wrongfully withheld, and still unlawfully and wrongfully withhold and detain the possession thereof from the plaintiff, whereby he has suffered damages to the amount of ten thousand dollars.

Wherefore the plaintiff prays judgment against the said defendants for the restitution of said tract of land and for ten thousand dollars damages, besides costs of suit.

BROOKS & WHITNEY,
*Attorneys for Plaintiff.*

(Endorsed:) Filed Octo. 30th, 1865. Geo. C. Gorham, clk., pr. W. F. Huestis, dep. clk.

*Answer of Mary King.*

In the circuit court of the United States for the northern district of California. Tenth circuit.

JAMES CLINTON BOLTON, PLAINTIFF,
*vs.*
JOHN VAN REYNEGAN ET AL., DEFENDANTS.

And now comes Mary King, one of the defendants in the above-entitled cause, and for her separate answer to the complaint filed in this cause denies, generally and specifically, all and singular each and every one of the allegations in said complaint contained.

Wherefore defendant, Mary King, prays to be hence dismissed with her costs, &c.

Dated December 23d, 1865.

W. W. DRUMMOND,
E. L. B. BROOKS,
*Attys. for Defendant, Mary King.*

(Endorsed:) Filed Dec. 26th, 1865. Geo. C. Gorham, clerk, by Dan'l T. Sullivan, deputy.

7 *Answer of J. L. Van Reynegan.*

Circuit court of the United States, northern district of California.

JAMES C. BOLTON
*vs.*
J. L. VAN REYNEGAN ET ALS.

The defendant, J. L. Van Reynegan, for his separate answer to the complaint, herein denies, generally and specifically, all and singular the allegations of the complaint.

And for further answer this defendant says that neither the plaintiff, his ancestor nor ancestors, predecessor nor predecessors, nor those from whom he claims, nor any nor either of them, were or have been seized or possessed of the premises described in the complaint, or any part thereof, at any time within five years next before the commencement of this action.

Wherefore this defendant prays judgment for his costs.

J. McM. SHAFTER,
*For Defendant.*

8 (Endorsed:) Filed Feb'y 10, 1866. Geo. C. Gorham, clerk, by Dan'l T. Sullivan, deputy.

9 *Answer of Jonathan Bickerstaff.*

Circuit court of the United States, northern district of California.

JAMES C. BOLTON
*vs.*
J. L. VAN REYNEGAN, ET ALS.

The defendant, Jonathan Bickerstaff, for his separate answer to the complaint herein, denies, generally and specifically, all and singular the allegations of the complaint.

And for further answer this defendant says that neither the plaintiff, his ancestor nor ancestors, predecessor nor predecessors, nor those from whom he claims, nor any nor either of them, were or have been seized or possessed of the premises described in the complaint, or any part thereof, at any time within five years next before the commencement of this action.

Wherefore this defendant prays judgment for his costs.

J. McM. SHAFTER.
*For Defendant.*

10 (Endorsed:) Filed Feb'y 10, 1866. Geo. C. Gorham, clk., by Dan'l T. Sullivan, deputy.

11 *Answer of R. S. Brown.*

Circuit court of the United States, northern district of California.

JAMES C. BOLTON
*vs.*
J. L. VAN REYNEGAN ET ALS.

The defendant, R. S. Brown, for his separate answer to the complaint herein, denies, generally and specifically, all and singular the allegations of the complaint.

And for further answer this defendant says that neither the plaintiff, his ancestor nor ancestors, predecessor nor predecessors, nor those from whom he claims, nor any nor either of them, were or have been seized or possessed of the premises described in the complaint, or any part thereof, at any time within five years next before the commencement of this action.

Wherefore this defendant prays judgment for his costs.

J. McM. SHAFTER,
*For Defendant.*

12 (Endorsed:) Filed Feb'y 10, 1866. Geo. C. Gorham, clk., by Dan'l T. Sullivan, deputy.

13 *Answer of David Clingan.*

Circuit court of the United States, northern district of California.

JAMES C. BOLTON,
*vs.*
J. L. VAN REYNEGAN, ET ALS.

The defendant, David Clingan, for his separate answer to the complaint herein, denies, generally and specifically, all and singular the allegations of the complaint.

And for further answer this defendant says that neither the plaintiff, his ancestor nor ancestors, predecessor nor predecessors, nor those from whom he claims, nor any nor either of them, were or have been seized or possessed of the premises described in the complaint, or any part thereof, at any time within five years next before the commencement of this action.

Wherefore this defendant prays judgment for his costs.

J. McM. SHAFTER,
*For Defendant.*

14 (Endorsed:) Filed Feb'y 10, 1866. Geo. C. Gorham, clk., by Dan'l T. Sullivan, deputy.

15 *Answer of James Cummings.*

Circuit court of the United States, northern district of California.

JAMES C. BOLTON,
*vs.*
J. L. VAN REYNEGAN, ET ALS.

The defendant, James Cummings, for his separate answer to the complaint herein, denies, generally and specifically, all and singular the allegations of the complaint.

And for further answer this defendant says that neither the plaintiff, his ancestor nor ancestors, predecessor nor predecessors, nor those from whom he claims, nor any nor either of them, were or have been seized or possessed of the premises described in the complaint, or any part thereof, at any time within five years next before the commencement of this action.

Wherefore this defendant prays judgment for his costs.

J. McM. SHAFTER,
*For Defendant.*

16 (Endorsed:) Filed Feb'y 10, 1866. Geo. C. Gorham, clk., by Dan'l T. Sullivan, deputy.

17 *Answer of Peter Dolan.*

Circuit court of the United States, northern district of California.

JAMES C. BOLTON,
*vs.*
J. L. VAN REYNEGAN, ET ALS.

The defendant, Peter Dolan, for his separate answer to the complaint herein, denies, generally and specifically, all and singular the allegations of the complaint.

And for further answer this defendant says that neither the plaintiff, his ancestor nor ancestors, predecessor nor predecessors, nor those from whom he claims, nor any nor either of them, were or have been seized or possessed of the premises described in the complaint, or any part thereof, at any time within five years next before the commencement of this action.

Wherefore this defendant prays judgment for his costs.

J. McM. SHAFTER,
*For Defendant.*

18 (Endorsed:) Filed Feb. 10, 1866. Geo. C. Gorham, clk., by Dan'l T. Sullivan, deputy.

19 *Answer of Michael Dowd.*

Circuit court of the United States, northern district of California.

JAMES C. BOLTON,
*vs.*
J. L. VAN REYNEGAN, ET ALS.

The defendant, Michael Dowd, for his separate answer to the complaint herein, denies, generally and specifically, all and singular the allegations of the complaint.

And for further answer this defendant says that neither the plaintiff, his ancestor nor ancestors, predecessor nor predecessors, nor those from whom he claims, nor any nor either of them, were or have been seized or possessed of the premises described in the complaint, or any part thereof, at any time within five years next before the commencement of this action.

Wherefore this defendant prays judgment for his costs.

J. McM. SHAFTER,
*For Defendant.*

20 (Endorsed:) Filed Feb'y 10, 1866. Geo. C. Gorham, clk., by Dan'l T. Sullivan, deputy.

21 *Answer of Murt. Tiernay.*

Circuit court of the United States, northern district of California.

JAMES C. BOLTON
*vs.*
J. L. VAN REYNEGAN ET ALS.

The defendant, Murt. Tiernay, for his separate answer to the complaint herein, denies, generally and specifically, all and singular the allegations of the complaint.

And for further answer this defendant says that neither the plaintiff, his ancestor nor ancestors, predecessor nor predecessors, nor those from

whom he claims, nor any nor either of them, were or have been seized or possessed of the premises described in the complaint, or any part thereof, at any time within five years next before the commencement of this action.

Wherefore this defendant prays judgment for his costs.

J. McM. SHAFTER,
*For Defendant.*

22 (Endorsed:) Filed Feb'y 10, 1866. Geo. C. Gorham, clk., by Dan'l T. Sullivan, deputy.

23 *Answer of Peter Gardner.*

Circuit court of the United States, northern district of California.

JAMES C. BOLTON
*vs.*
J. L. VAN REYNEGAN ET ALS.

The defendant, Peter Gardner, for his separate answer to the complaint herein, denies, generally and specifically, all and singular the allegations of the complaint.

And for further answer this defendant says that neither the plaintiff, his ancestor nor ancestors, predecessor nor predecessors, nor those from whom he claims, nor any nor either of them, were or have been seized or possessed of the premises described in the complaint, or any part thereof, at any time within five years next before the commencement of this action.

Wherefore this defendant prays judgment for his costs.

J. McM. SHAFTER,
*For Defendant.*

24 (Endorsed:) Filed Feb'y 10, 1866. Geo. C. Gorham, clk., by Dan'l T. Sullivan, deputy.

25 *Answer of Louis Denos.*

Circuit court of the United States, northern district of California.

JAMES C. BOLTON
*vs.*
J. L. VAN REYNEGAN ET ALS.

The defendant, Louis Denos, for his separate answer to the complaint herein, denies, generally and specifically, all and singular the allegations of the complaint.

And for further answer this defendant says that neither the plaintiff, his ancestor nor ancestors, predecessor nor predecessors, nor those from whom he claims, nor any nor either of them, were or have been seized or possessed of the premises described in the complaint, or any part thereof, at any time within five years next before the commencement of this action.

Wherefore this defendant prays judgment for his costs.

J. McM. SHAFTER,
*For Defendant.*

26 (Endorsed:) Filed Feb'y 10, 1866. Geo. C. Gorham, clk., by Dan'l T. Sullivan, deputy.

27 *Answer of Francisco Angenett.*

Circuit court of the United States, northern district of California.

JAMES C. BOLTON
*vs.*
J. L. VAN REYNEGAN ET ALS.

The defendant, Francisco Angenett, for his separate answer to the complaint herein, denies, generally and specifically, all and singular the allegations of the complaint.

And for further answer this defendant says that neither the plaintiff, his ancestor nor ancestors, predecessor nor predecessors, nor those from whom he claims, nor any nor either of them, were or have been seized or possessed of the premises described in the complaint, or any part thereof, at any time within five years next before the commencement of this action.

Wherefore this defendant prays judgment for his costs.

J. McM. SHAFTER,
*For Defendant.*

28 (Endorsed:) Filed Feb'y 10, 1866. Geo. C. Gorham, cl'k, by Dan'l T. Sullivan, deputy.

29 *Answer of Jose Albornos.*

Circuit court of the United States, northern district of California.

JAMES C. BOLTON
*vs.*
J. L. VAN REYNEGAN ET ALS.

The defendant, Jose Albornos, for his separate answer to the complaint herein, denies, generally and specifically, all and singular the allegations of the complaint.

And for further answer this defendant says that neither the plaintiff, his ancestor nor ancestors, predecessor nor predecessor, nor those from whom he claims, nor any nor either of them, were or have been seized or possessed of the premises described in the complaint, or any part thereof, at any time within five years next before the commencement of this action.

Wherefore this defendant prays judgment for his costs.

J. McM. SHAFTER,
*For Defendant.*

30 (Endorsed:) Filed Feb'y 10th, 1866. Geo. C. Gorham, cl'k, by Dan'l T. Sullivan, deputy.

31 *Answer of Mary King.*

Circuit court of the United States, northern district of California.

JAMES C. BOLTON
*vs.*
J. L. VAN REYNEGAN ET ALS.

The defendant, Mary King, for *his* separate answer to the complaint herein, denies, generally and specifically, all and singular the allegations of the complaint.

And for further answer this defendant says that neither the plaintiff, his ancestor nor ancestors, predecessor nor predecessors, nor those from whom he claims, nor any nor either of them, were or have been seized or possessed of the premises described in the complaint, or any part thereof, at any time within five years next before the commencement of this action.

Wherefore this defendant prays judgment for *his* costs.

J. McM. SHAFTER,
*For Defendant.*

32 (Endorsed:) Filed Feb'y 10, 1866. Geo. C. Gorham, cl'k, by Dan'l T. Sullivan, deputy.

33 *Answer of George Hansom.*

Circuit court of the United States, northern district of California.

JAMES C. BOLTON
*vs.*
J. L. VAN REYNEGAN ET ALS.

The defendant, George Hansom, for his separtate answer to the complaint herein, denies, generally and specifically, all and singular the allegations of the complaint.

And for further answer this defendant says that neither the plaintiff, his ancestor nor ancesters, predecessor nor predecessors, nor those from whom he claims, nor any nor either of them, were or have been seized or possessed of the premises described in the complaint, or any part thereof, at any time within five years next before the commencement of this action.

Wherefore this defendant prays judgment for his costs.

J. McM. SHAFTER,
*For Defendant.*

34 (Endorsed:) Filed Feb'y 10, 1866. Geo. C. Gorham, clk., by Dan'l T. Sullivan, deputy.

35 *Answer of Philip Ray.*

In the circuit court of the United States, in and for the northern district of the State of California.

JAMES C. BOLTON
*vs.*
J. L. VAN REYNEGAN ET ALS.

And now come the defendant, Philip Ray, by J. McM. Shafter, his attorney, and for answer to the complaint herein—

1. Denies, generally and specifically, all and singular the allegations in said complaint contained.

2. And for a further and separate defence this defendant says that one Samuel R. Throckmorton, at the several times mentioned in the complaint and from thence hitherto, was, has been, and still is the owner and seized in his demesne as of fee of the following described lands and tenements, being parcel of the premises described and demanded in the complaint, viz: All that certain portion of said

36 lands and premises lying westerly and southwesterly of the most easterly waters of the arroyo Principal of the Corte de Madera del Presidio, and westerly and southwesterly of and including a certain fence and road running parallel with and sometimes crossing said waters. That at and before the time of the commencement of this action, this defendant was, and has ever since been, and still is in possession of said portion of said premises as the tenant of said Samuel R. Throckmorton.

3. And for a further and separate defense this defendant says that the plaintiff ought not to have or maintain his aforesaid action as against this defendant, because, he say' that neither the plaintiff, his predecessor or predecessors, grantor or grantors, ancestor or ancestors, nor any nor either of them were or have been seized or possessed of the aforesaid premises in said complaint demanded, or any part thereof, at any time within five years prior to the commencement of this action.

4. And for a further and separate defense to said action this defendant says that the cause of action in said complaint set forth
37 did not first accrue or descend at any time within five years before the commencement of this action.

5. And for a further and separate defense to said action this defendant says that the defendant and those under whom he claims have for more than thirty-five years prior to the commencement of this action been in the adverse, uninterrupted, and exclusive possession of the portion of said premises described in the second subdivision of this answer.

6. Wherefore this defendant prays judgment against said plaintiff, that it be adjudged and decreed that the said plaintiff has no right, title, or interest in or to said premises, or any part thereof; and that said plaintiff and all persons claiming by, from, through, or under him be perpetually restrained and enjoined from claiming or asserting any right, title, or interest in or to said premises, or any part thereof, and from commencing or prosecuting any actions for the recovery of said premises or the possession thereof, and for such other and further relief as to equity shall seem meet, and for costs of suit.

J. McM. SHAFTER,
*Attorney for Defendant.*

38 (Endorsed:) Filed Feb'y 10th, 1866. Geo. C. Gorham, clk., by Dan'l T. Sullivan, deputy.

39 *Answer of Edward Wormouth.*

Circuit court of the United States, northern district of California.

JAMES C. BOLTON
*vs.*
J. L. VAN REYNEGAN ET ALS.

The defendant, Edward Wormouth, for his separate answer to the complaint herein, denies, generally and specifically, all and singular the allegations of the complaint.

And for further answer this defendant says that neither the plaintiff, his ancestor nor ancestors, predecessor nor predecessors, nor those from whom he claims, nor any nor either of them, were or have been seized or possessed of the premises described in the complaint, or any part

thereof, at any time within five years next before the commencement of this action.

Wherefore this defendant prays judgment for his costs.

J. McM. SHAFTER,
*For Defendant.*

40 (Endorsed:) Filed Feb'y 10, 1866. Geo. C. Gorham, clk., by Dan'l T. Sullivan, deputy.

41 *Answer of John Doe.*

Circuit court of the United States, northern district of California.

JAMES C. BOLTON
*vs.*
J. L. VAN REYNEGAN ET ALS.

The defendant, John Doe, for his separate answer to the complaint herein, denies, generally and specifically, all and singular the allegations of the complaint.

And for further answer this defendant says that neither the plaintiff, his ancestor nor ancestors, predecessor nor predecessors, nor those from whom he claims, nor any nor either of them, were or have been seized or possessed of the premises described in the complaint, or any part thereof, at any time within five years next before the commencement of this action.

Wherefore this defendant prays judgment for his costs.

J. McM. SHAFTER,
*For Defendant.*

42 (Endorsed:) Filed Feb'y 10, 1866. Geo. C. Gorham, clk., by Dan'l T. Sullivan, deputy.

43 *Answer of Richard Roe.*

Circuit court of the United States, northern district of California.

JAMES C. BOLTON
*vs.*
J. L. VAN REYNEGAN ET ALS.

The defendant, Richard Roe, for his separate answer to the complaint herein, denies, generally and specifically, all and singular the allegations of the complaint.

And for further answer this defendant says that neither the plaintiff, his ancestor nor ancestors, predecessor nor predecessors, nor those from whom he claims, nor any nor either of them, were or have been seized or possessed of the premises described in the complaint, or any part thereof, at any time within five years next before the commencement of this action.

Wherefore this defendant prays judgment for his costs.

J. McM. SHAFTER,
*For Defendant.*

44 (Endorsed:) Filed Feb'y 10, 1866. Geo. C. Gorham, clk., pr. Dan'l T. Sullivan, deputy.

45 *Answer of John Black.*

Circuit court of the United States, northern district of California.

JAMES C. BOLTON
*vs.*
J. L. VAN REYNEGAN ET ALS.

The defendant, John Black, for his separate answer to the complaint herein, denies, generally and specifically, all and singular the allegations of the complaint.

And for further answer this defendant says that neither the plaintiff, his ancestor nor ancestors, predecessor nor predecessors, nor those from whom he claims, nor any nor either of them, were or have been seized or possessed of the premises described in the complaint, or any part thereof, at any time within five years next before the commencement of this action.

Wherefore this defendant prays judgment for his costs.

J. McM. SHAFTER,
*For Defendant.*

46 (Endorsed:) Filed Feb'y 10, 1866. Geo. C. Gorham, clk., by Dan'l T. Sullivan, deputy.

47 *Answer of Peter Blue.*

Circuit court of the United States, northern district of California.

JAMES C. BOLTON
*vs.*
J. L. VAN REYNEGAN ET ALS.

The defendant, Peter Blue, for his separate answer to the complaint herein, denies, generally and specifically, all and singular the allegations of the complaint.

And for further answer this defendant says that neither the plaintiff, his ancestor nor ancestors, predecessor nor predecessors, nor those from whom he claims, nor any nor either of them, were or have been seized or possessed, of the premises described in the complaint, or any part thereof, at any time within five years next before the commencement of this action.

Wherefore this defendant prays judgment for his costs.

J. McM. SHAFTER,
*For Defendant.*

48 (Endorsed:) Filed Feb'y 10, 1866. Geo. C. Gorham, clk., by Dan'l T. Sullivan, deputy.

49 *Answer of Geo. White.*

Circuit court of the United States, northern district of California.

JAMES C. BOLTON
*vs.*
J. L. VAN REYNEGAN ET ALS.

The defendant, Geo. White, for his separate answer to the complaint herein, denies, generally and specifically, all and singular the allegations of the complaint.

And for further answer this defendant says that neither the plaintiff, his ancestor nor ancestors, predecessor nor predecessors, nor those from whom he claims, nor any nor either of them, were or have been seized or possessed of the premises described in the complaint, or any part thereof, at any time within five years next before the commencement of this action.

Wherefore this defendant prays judgment for his costs.

J. McM. SHAFTER,
*For Defendant.*

50 (Endorsed:) Filed Feb'y 10, 1866. Geo. C. Gorham, clk., by Dan'l T. Sullivan, deputy.

51 *Supplemental answer of Philip Ray.*

In the circuit court of the United States in and for the district of California.

JAMES C. BOLTON
*vs.*
J. L. VAN REYNEGAN ET ALS.

And now comes the defendant, Philip Ray, and for a further and supplemental answer to the complaint herein, alleges that at the time of the commencement of this action the said plaintiff was the owner and seized in his demesne as of fee, of the undivided one-fourth part of the premises described in the complaint, and of no other or greater interest or estate in said lands or any part thereof. That since the commencement of this action, to wit, on the 19th day of June, A. D. 1866, Samuel R. Throckmorton, who was then the landlord of this defendant, acquired and became the owner and seized in his demesne as of fee the undivided one-
fourth part of said demanded premises as tenant in common with
52 said plaintiff; and that said Throckmorton has ever since been and still is the owner and seized in his demesne as of fee, of the undivided one-fourth part of said premises, as a tenant in common with said plaintiff; and that on said 19th day of June, 1866, and from thence up to the first day of July, A. D. 1869, this defendant was in possession of that portion of the demanded premises described in the second subdivision of the answer heretofore filed by this defendant, as the tenant of said Throckmorton, and not otherwise. And this defendant alleges that he has never been and is not now in possession of any other portion of said demanded premises, except that part thereof described in the second subdivision of said answer, and that this defendant has not been in possession of said demanded premises or any part thereof since the said first day of July, A. D. 1869. And this defendant denies that by reason of any matter or thing alleged in the complaint the plaintiff has sustained damages in the sum of $10, 00 or any sum whatever.

J. McM. SHAFTER,
*Att'y for Defendant Ray.*

53 (Endorsed:) Filed August 25th, 1870. L. S. B. Sawyer, clerk.

54 *Order allowing amended complaint filed, &c.*

At a stated term of the circuit court of the United States of America, for the ninth judicial circuit, district of California, held at the court-

room in the city of San Francisco, on Monday the 6th day of February, in the year of our Lord one thousand eight hundred and seventy-one.

Present: The honorable Lorenzo Sawyer, judge.

JAMES C. BOLTON
*vs.*
JOHN L. VAN REYNEGAN ET ALS.

On motion of B. S. Brooks, esq., and on filing stipulation, ordered amended complaint filed. On motion of J. J. Williams, esq., and on filing stipulation, ordered cause dismissed as to defendants Philip Ray and José Albanos.

55 I hereby certify that the foregoing is a full and true copy of an original order made and entered in the above-entitled action.

Attest my hand and seal of said circuit court this 29 day of July, A. D. 1871.

[SEAL.]

L. S. B. SAWYER, *Clerk*,
By J. F. O'BEIRNE,
*Deputy Clerk.*

(Endorsed:) Filed July 29, 1871. L. S. B. Sawyer, clerk, by J. F. O'Beirne, deputy clerk.

56 *Amended complaint.*

In the circuit court of the United States for the northern distict of California, tenth circuit.

JAMES CLINTON BOLTON, PLFF.
*vs.*
JOHN L. VAN REYNEGAN, JONATHAN BICKERSTAFF, R. S. Brown, David Clingan, James Cummings, Peter Dolan, Michael Dowd, Murt Tierney, Peter Gardner, Luis Denos, Francisco Augenett, José Albornos, Mary King, George Hanson, Philip Ray, Edward Warmouth, John Doe, Richard Roe, John Black, Peter Blue, and John White, defendants.
} Amended complaint.

The plaintiff, James Clinton Bolton, by Brooks and Whitney, his attorneys, complains of John L. Van Reynegan, Jonathan Bickerstaff, R. S. Brown, David Clingan, James Cummings, Peter Dolan, Michael Dowd, Murt Tierney, Peter Gardner, Luis Denos, Francisco Augnett, Jose Albornos, Mary King, George Hansom, Philip Ray, Edward
57 Wormouth, John Doe, Richard Roe, John Black, Peter Blue, and George White, defendants, the last five names being fictitious names, intended to designate certain defendants whose true names are unknown to plaintiff, and whose true names, when discovered, he prays may be inserted.

And, for cause of action, he alleges that the plaintiff is a citizen and resident of the State of New York, and defendants are citizens and residents of the State of California.

That on the 12th day of August, 1865, the plaintiff was and ever since has been the owner in fee-simple absolute and entitled to the possession

of that certain tract of land lying and being in the county of Marin, in said State of California, bounded and described as follows, to wit: Commencing at station 19 of the survey of the Sancelito Rancho, as made by Wm. J. Lewis and approved Oct., 1860, being a laurel on the bank of the arroyo 24 inches in diameter, marked "C. M. P. 177, S. 19," standing on the southwest bank of the arroyo Principal del Corte Madera del Presidio; thence along the said arroyo following the meanders to station
58 180 of Matthewson's survey of the Rancho Corte Madera del Presidio, running thence north 8½ east 152 chains to a laurel 24 inches in diameter, marked "P. Q. 99," a point on the survey of the rancho Puenta de Quentin, on the arroyo Holon, at the Corte de Madera de San Pablo; thence following down the arroyo Holon north 26¾° east 15 chains 10 links to a laurel 36 inches in diameter marked "P. Q. 98;" thence north 17½ east 9 chains 55 links to a redwood marked "P. Q. 97;" thence north 33° east 20 chains 20 links to the mouth of arroyo Holon; thence along the border of the marsh of San Francisco Bay north 86° east 5 chains 60 links; thence south 35¼° east 6 chains 80 links, south 46½° west 7 chains, south 86½° east 9 chains 60 links, north 79° east 13 chains 80 links, south 18° west 16 chains, south 6° east 17 chains 10 links, south 60½° east 10 chains 20 links, south 1¼° east 6 chains 70 links, south 42½ west 6 chains, south 76° west 13 chains 90 links, south 30¼ west 14 chains 20 links, south 32° east 5 chains 70 links, south 80½° E. 37 chains, south 64¼° east 6 chains 60 links, south 69½ east 13 chain', south 52¾° east 11 chains 80 links, south 24½° east 7 chains, north 72° east 5 chains, south 57° east 4 chains, south 40¾°
59 west 12 chains, south 10¾° east 25 chains 79 links to a post marked "C. M. P. No. 1;" thence leaving the salt marsh south 21 chains 30 links, west 40 chains, south 20 chains, west 60 chains, south 20 chains, west 40 chains, south 2 chains 45 links to arroyo Corte Madera del Presidio; thence up said arroyo S. 33¾° east 5 chains 80 links south 59¼° east 6 chains 40 links, south 41¾° east 24 chains 10 links to a laurel on the bank of the arroyo 24 inches in diameter marked "C. M. P. 177, S. 19," the point of commencement, containing 2,038$\frac{56}{100}$ acres, being a portion of the rancho Corte de Madera del Presidio, which was granted to Juan Reid by the Mexican government, of which juridical possession was delivered to him. The claim for which rancho, under said grant, was duly presented to the board of commissioners for settlement of private land-claims in the State of California by the widow and heirs of the said Juan Reid, and which was duly confirmed by said board and the district court of the United States for the northern district of California, and for which no patent has as yet been issued. That being so the owner, and entitled to the possession of said tract of
60 land, the said defendants, on the 13th day of August, 1865, unlawfully and wrongfully entered upon the same and ousted the plaintiff therefrom, and from thence hitherto have unlawfully and wrongfully withheld, and still unlawfully and wrongfully withhold and detain' the possession thereof from the plaintiff, whereby he has suffered damage to the amount of ten thousand dollars.

Wherefore the plaintiff prays judgment against the said defendant for the restitution of said tract of land and for ten thousand dollars damages, besides costs of suit.

B. S. BROOKS,
*Plff. Atty.*

(Endorsed:) Filed 6 Feb., 1871. L. S. B. Sawyer, clerk.

61 *Amended complaint.*

In the circuit court of the United States for the northern district of California, tenth circuit.

JAMES CLINTON BOLTON, PLFF.,
*vs.*
JOHN L. VAN REYNEGAN, JONATHAN BICKERSTAFF, R. S. Brown, David Clingan, James Cummings, Peter Dolan, Michael Dowd, Murt Tierney, Peter Gardner, Luis Denos, Francisco Augenett, Mary King, George Hansom, Edward Warmouth, John Doe, Richard Roe, John Black, Peter Blue, and John White, defendants.

The plaintiff, James Clinton Bolton, by Brooks & Whitney, his attorneys, complains of John L. Van Reynegan, Jonathan Bickerstaff, R. S. Brown, David Clingan, James Cummings, Peter Dolan, Michael Dowd, Murt Tierney, Peter Gardner, Luis Denos, Francisco Augenett, Mary King, George Hansom, Edward Warmouth, John Doe, Richard
62 Roe, John Black, Peter Blue, and George White, defendants, the last five names being fictitious names, intended to designate certain defendants whose true names are unknown to plaintiff, and whose true names, when discovered, he prays may be inserted, and, for cause of action, alleges that the plaintiff is a citizen and resident of the State of New York, and the defendants are citizens and residents of the State of California. That on the 12 day of August, 1865, the plaintiff was and ever since has been the owner in fee-simple absolute, and entitled to the possession, of that certain tract of land situate, lying, and being in the county of Marin, in said State of California, bounded and described as follows, to wit: Commencing at station 181 of the survey of R. C. Mathewson of the rancho Corte Madera del Presidio, running thence N. 8½° E. 152 chains to a laurel 24 inches in diameter, marked "P. Q. 99," a point in the survey of the rancho Punta de Quentin, on the arroyo Holon, at the Corte de Madera de San Pablo; thence following down the arroyo Holon N. 26¾° east 15 chains 10 links
63 to a laurel 36 inches in diameter, marked "P. Q. 98,"; thence north 17½° east 9 chains 55 links to a redwood, marked "P. Q. 97;" thence N. 33° east 20 chains 20 links to the mouth of the arroyo Holon; thence along the border of the marsh of San Francisco Bay N. 86° east 5 chains 60 links; thence S. 35¼° east 6 chains 80 links, S. 46½° W. 7 chains, S. 86½° E. 9 chains 60 links, N. 79° E. 13 chains 80 links, S. 18° W. 16 chains, S. 69° E. 17 chains 10 links, S. 60½ east 10 chains 20 links, S. 1¼° E. 6 chains 70 links, S. 42½° W. 6 chains, S. 76° W. 13 chains 90 links, S. 30¼° W. 14 chains 20 links, S. 32° E. 5 chains 70 links, S. 80½° E. 37 chains, S. 64¼° E. 6 chains 60 links, S. 69½° E. 13 chains, S. 52¾° E. 11 chains 80 links, S. 24½° E. 7 chains, N. 72° E. 5 chains, S. 57° E. 4 chains, S. 40¾° W. 12 chains, S. 10¾° E. 25 chains 79 links to a post marked "C. M. P., No. 1;" thence leaving the salt marsh south 21 chains 30 links, W. 40 chains, S. 20 chains, W. 60 chains, S. 20 chains, W. 40 chains to said station 181, the point of commencement, containing about 1,500 acres, being a portion of the rancho Corte de Madera del Presidio, which was granted to Juan Reid by the Mexican government, and of which juridical possession was delivered to him;
64 the claim for which rancho under said grant was duly presented

to the board of commissioners for settlement of private land claims in the State of California by the widow and heirs of the said Juan Reid, and which was duly confirmed by said board and the district court of the United States for the northern district of California, and for which no patent has as yet been issued.

That being so the owner and entitled to the possession of said tract of land, the said defendants, on the 13th day of August, 1865, unlawfully and wrongfully entered upon the same and ousted the plaintiff therefrom, and from thence hitherto have unlawfully and wrongfully withheld and still unlawfully and wrongfully withhold and detain the possession thereof from the plaintiff, whereby he has suffered damages to the amount of ten thousand dollars.

Wherefore the plaintiff prays judgment against the said defendants for the restitution of said tract of land and for ten thousand dollars damages, besides costs of suit.

B. S. BROOKS,
*Plff. Atty.*

65 (Endorsed:) Filed 11 Feb., 1871, by order of court. L. S. B. Sawyer, clk.

66 *Stipulation that amended complaint of* 11 *Feb.*, 1871, *be filed.*

United States circuit court, district of California.

JAMES C. BOLTON
*vs.*
J. L. VAN REYNEGAN ET ALS.

An error in description having occurred in the stipulation and amended complaint, filed in this cause on the 6th day of February, 1871, it is hereby stipulated that the amended complaint, hereto annexed, be filed instead and place of the complaint and amended complaint heretofore filed herein. The names of Philip Ray and of José Albornos having been erased in accordance with a stipulation on file, and the suit, by order of court, having been dismissed as to them.

J. McM. SHAFTER,
*Atty. for Defendants,*
Per J. M. SEAWELL,
B. S. BROOKS,
*Plff. Atty.*

(Endorsed:) Filed 11 Feb'y, 1871. L. S. B. Sawyer, clerk.

67 *Findings.*

In the United States circuit court, district of California.

JAMES C. BOLTON
*vs.*
JOHN L. VAN REYNEGAN ET AL.

This cause came on to be heard regularly in its place upon the calender, on the 25th day of August, 1870, B. S. Brooks, esqr., appearing as counsel for the plaintiff, and J. McM. Shafter, esq., and E. L. Gould, esq., for defendants, and a trial by jury having been expressly waived by a stipulation in writing, signed by counsel for the plaintiff and de-

fendants, and filed with the clerk of said court, the said cause was tried by the court sitting without a jury, as to all of the said defendants excepting Peter Dolan and Michael Dowd, as to which said last-named defendants said cause was discontinued. Whereupon, the court having heard the proofs of the respective parties, both oral and documentary, and the arguments of counsel for plaintiff and defendants, and
68 having considered the evidence and the law of the case, finds as matter of fact in the case: That in the year 1834, the Mexican government, by Governor José Figueroa, granted to one Juan Reid a tract of land, called "Corte de Medera del Presidio, as far as the point Tiberon, bounding with the mission of San Reafael and the port of San Francisco," the quantity of land being specified in said grant as "one square league, a little more or less, as explained by the map attached to the expediente."

That in the year 1835, juridical possession of said land so granted was given to said Juan Reid by the proper Mexican officers, and the said lands described in the amended complaint, and hereinafter described, are embraced within the external boundaries mentioned in said grant, and also within the tract of land of which juridical possession was given as aforesaid under said grant, and said Reid possessed and enjoyed said lands, claiming title under said grant up to the time of his death, and he died in such possession and enjoyment prior to December 23, 1852.

69 On the death of said Juan Reid, all the right, title, and interest in said lands derived under said grant and act of juridical possession, and his subsequent possession thereunder, descended to and vested in his children and heirs at law, among whom were John J. Reid, Hilarita Reid, and Inez Reid de Deffebach, who subsequently and before the commencement of this action conveyed said premises to plaintiff by deed duly executed, acknowledged, and recorded.

That said heirs of Juan Reid, on the 23d day of December, 1852, presented said grant and their claim thereunder for confirmation to the board of land commissioners in pursuance of the provisions of an act of Congress, entitled "An act to ascertain and settle private land-claims in the State of California," approved March 3d, 1851. That such proceedings were afterwards had that said grant and claim were confirmed to said heirs of Juan Reid by a decree of said board on the thirteenth day of June, A. D. 1854.

An appeal from said decree having been taken by the United States to the district court of the United States for the northern dis-
70 trict of California, such proceedings were afterwards had in said court, that on the 14th day of January, 1856, a decree was entered in said court affirming the said decree of said board of land commissioners, by which said decree of the district court it was, among other things, "ordered, adjudged, and decreed that the claim of said appellees is a good and valid claim, and that the said claim be and the same is hereby confirmed to the extent and quantity of one square league, being the same land described in the grant, and of which the possession was proved to have been long enjoyed; provided, that the said quantity of one square league now confirmed to the claimants be contained within the boundaries called for in the said grant, and the map to which the grant refers; and if there be less than that quantity within the said boundaries, then we confirm to the claimants that less quantity," and the said decree of confirmation became final.

That the lands embraced within the external boundaries of said grant and within the boundaries of the said juridical possession is some fif-

teen hundred acres more than one square league, and at the time
71 of the commencement of this action the said lands had not been finally surveyed and located by the officers of the Government of the United States, but a survey had been made and approved by the surveyor-general of the United States for the State of California, in such a manner as to limit the amount to one square league in quantity, and said survey so made excluded the land described in the complaint in this action. But said survey was contested by the said confirmees, and the contest was still undetermined at the time of the commencement of this action, and at the time of the trial thereof the said contest was still pending before the proper officer of the United States on appeal, and the said survey and location had not then and has not yet become final.

That after the making of said grant and the said juridical possession, and more than three years before the commencement of this suit, the said defendants, except the defendants Hanson and King, wrongfully and unlawfully and without right or title entered into and upon said land and premises, and did unlawfully eject, oust, and expel
72 the plaintiff therefrom, and thence hitherto have and do now unlawfully detain and withhold from the plaintiff the possession of the said lands and premises.

That the defendant, R. S. Brown has possessed and occupied one hundred and sixty acres of said land; that the value of the use and occupation of the said lands since three years before the commencement of this suit is seventeen hundred and seventy-six ($1,776.00) dollars.

That said defendant has erected permanent improvements of the value of thirteen hundred and fifty ($1,350) dollars, and the difference between said value of said improvements and of said value of issues and profits is four hundred and twenty-six ($426) dollars.

That the defendant, Francisco Angennetti, has possessed and occupied one hundred and sixty acres of said land; that the value of the use and occupation of the said lands since three years before the commencement of this action is twelve hundred and sixteen $\frac{67}{100}$ ($1,216.67) dollars.

That said defendant has erected permanent improvements of the value of seven hundred and sixty-six $\frac{67}{100}$ ($766.67) dollars; and the difference between the value of said improvements and of said value of issues
73 and profits is four hundred and fifty ($450) dollars.

That the defendant, Peter Gardener, has possessed and occupied one hundred and sixty acres of said land; that the value of the use and occupation of the said lands since three years before the commencement of this action is sixteen hundred and forty-six $\frac{66}{100}$ ($1,646.66) dollars; that said defendant has erected permanent improvements of the value of eleven hundred and fifty dollars, ($1,150;) and the difference between the value of said improvements and of said value of issues and profits is four hundred and ninety-six $\frac{66}{100}$ ($496.66) dollars.

That the value of the improvements erected by the other defendants herein exceed the value of the issues and profits of the lands possessed and occupied by them since three years before the commencement of this suit.

That each of said defendants, except Hanson and King, (who were not in possession of any part of said land,) was in the adverse possession of said lands at the time of the commencement of this suit, claiming to be rightfully in possession under the pre-emption laws
74 of the United States, and had been in such possession for more than three years prior thereto.

And, as conclusions of law, that the said defendants so in possession have not, nor has either or any of them, any right or title to the said lands and premises hereinafter particularly described, but wrongfully and unlawfully detain and withhold the possession thereof from the plaintiff.

That the said plaintiff is entitled to have and recover of and from the said defendants, John L. Van Reynegan, Jonathan Bickerstaff, R. S. Brown, David Clingan, James Cummings, Peter Gardener, Louis Denos, Francis Angenetti, Murt Tierney, Edward Warmouth, and Victor Garnour, the possession of all that certain tract of land as in the said amended complaint set forth, bounded and described as follows, to wit:

All that certain tract of land situate in the county of Marin, State of California, being part of the rancho Corte Madera del Presidio, or Reed Ranch, bounded and described as follows, to wit: Commencing at station 181 of the survey of R. C. Mathewson of the rancho
75 Corte Madera del Presidio; running thence north 8½° east 152 chains, to a laurel 24 inches in diameter, marked "P. Q. 99," a point in the survey of the rancho Punta de Quentin, on the arroyo Holon, at the Corte Madera de San Pablo; thence following down the arroyo Holon north 26¾° east 15 chains 10 links, to a laurel 36 inches in diameter, marked "P. Q. 98;" thence north 17½° east 9 chains 55 links, to a redwood marked "P. Q. 97;" thence north 33° east 20 chains 20 links, to the mouth of the arroyo Holon; thence along the border of the marsh of San Francisco Bay, north 86° east 5 chains 60 links; thence south 35¼° east 6 chains 80 links; south 46½° west 7 chains; south 86½° east 9 chains 60 links; north 79° east 13 chains 80 links; south 18° west 16 chains; south 69° east 17 chains 10 links; south 60½° east 10 chains 20 links; south 1¼° east 6 chains 70 links; south 42½° west 6 chains; south 76° west 13 chains 90 links; south 30¼° west 14 chains 20 links; south 32° east 5 chains 70 links; south 80½° east 37 chains; south 64¼° east 6 chains 60 links; south 69½° east 13 chains; south 52¾° east 11 chains 80 links; south 24½° east 7 chains; north 72° east 5 chains; south 57° east 4 chains; south 40¾° west 12
76 chains; south 10¾° east 25 chains 79 links, to a post marked "C. M. P., No. 1;" thence leaving the salt marsh south 21 chains 30 links; west 40 chains; south 20 chains; west, 60 chains; south 20 chains; west 40 chains, to said station 181, the point of commencement, containing fifteen hundred acres, more or less.

And that plaintiff do have and recover from said defendants his costs in said action.

That plaintiff do further have and recover from said defendant, R. S. Brown, four hundred and twenty-six dollars, damages for issues and profits, and from said defendant, Francisco Angenetti, four hundred and fifty dollars damages for issues and profits, and from said defendant, Peter Gardener, four hundred and ninety-six $\frac{66}{100}$ dollars, damages for issues and profits.

And that plaintiff is entitled to have a judgment entered against said defendants in accordance herewith.

And that judgment be entered in favor of defendants, Hanson and King.

(Signed) LORENZO SAWYER,
*Circuit Judge.*

(Endorsed:) Filed July 25th, 1871. L. S. B. Sawyer, clerk, by J. F. O'Beirne, deputy clerk.

77 *Judgment.*

In the United States circuit court, ninth judicial circuit, district of California.

JAMES C. BOLTON
*v.*
JOHN L. VAN REYNEGAN, JONATHAN BICKERSTAFF, et al.

This cause having come on regularly for trial in its place upon the calendar, on the 25th day of August, 1870, B. F. Brooks, esq., appearing as counsel for plaintiff, and J. McM. Shafter and E. L. Gould, esqrs., for defendants, and a trial by jury having been expressly waived by a stipulation in writing, signed by counsel for the plaintiff and the defendants, and filed with the clerk of said court, the cause was tried before the court sitting without a jury, as to all of the defendants excepting Peter Dolan and Michael Dowd, as to which said last-named defendants said cause was discontinued; and after hearing testimony, oral and documentary, and arguments of counsel for the
78 plaintiff and the defendants, said cause was submitted to the court for consideration and decision. And after due deliberation, and the court having filed its findings thereon, it is considered by the court that said plaintiff do have and recover of and from the defendants, John L. Van Reynegan, Jonathan Bickerstaff, R. S. Brown, David Clingan, James Cummings, Peter Gardener, Louis Denos, Francisco Angenetti, Mart. Tierney, Edward Warmouth and Victor Garnon, the possession of those certain lands and premises situate in the county of Marin, State of California, and described in the amended complaint herein as being part of the rancho Corte Madera del Presidio, or Reed Ranch, bounded and described as follows, to wit: Commencing at station 181 of the survey of R. C. Mathewson, of the rancho Corte Madera del Presidio, running thence north 8½° east 152 chains to a laurel 24 inches in diameter, marked "P. Q. 99," a point in the survey of the rancho Punta de Quentin, on the arroyo Holon, at the Corte Madera de San Pablo; thence following down the arroyo Holon north 26¾° east 15 chains 10 links to a laurel 36 inches in diameter, marked "P. Q. 98;" thence north 17½° east 9 chains 55 links to
79 a redwood marked "P. Q. 97;" thence north 33° east 20 chains 20 links to the mouth of the arroyo Holon; thence along the border of the marsh of San Francisco Bay north 86° east 5 chains 60 links; thence south 35¼° east 6 chains 80 links, south 46½° west 7 chains, south 86½° east 9 chains 60 links, north 79° east 13 chains 80 links, south 18° west 16 chains, south 69° east 17 chains 10 links, south 60½° east 10 chains 20 links, south 1¼° east 6 chains 70 links, south 42½° west 6 chains, south 76° west 13 chains 90 links, south 30¼° west 14 chains 20 links, south 32° east 5 chains 70 links, south 80½° east 37 chains, south 64¼° east 6 chains 60 links, south 69½° east 13 chains, south 52¾° east 11 chains 80 links, south 24½° east 7 chains, north 72° east 5 chains, south 57° east 4 chains, south 40¾° west 12 chains, south 10¾° east 25 chains 79 links to a post marked "C. M. P., No. 1;" thence leaving the salt marsh south 21 chains 30 links, west 40 chains, south 20 chains, west 60 chains, south 20 chains, west 40 chains to said station 181, the point of commencement, containing fifteen hundred acres, more or less, together with said plaintiff's costs and disbursements incurred in this action, amounting to the
80 sum of five hundred and thirty-six dollars and forty-four cents, ($536.44.)

And that said plaintiff have and recover of and from said defendant, R. S. Brown, the sum of four hundred and twenty-six dollars, for his damages for the detention of said lands, and from the said defendant Francisco Angennetti the sum of four hundred and fifty dollars, for damages for the detention of said land; and from said defendant Peter Gardener the sum of four hundred and ninety-six dollars damages for the detention of said land.

And that as to the said defendants George Hansom and Mary King, that said defendants go hence without day.

Judgment entered this 26th day of July, A. D. 1871.

(Signed) L. S. B. SAWYER,
*Clerk.*

A true copy of the original judgment, entered in the within-entitled action in judgment, Register C. L., No. 1, pages 477–8.

Attest, &c.

[SEAL.] L. S. B. SAWYER, *Clerk*,
By J. F. O'BEIRNE, *Deputy Clerk.*

81 (Endorsed:) Filed July 26, 1871. L. S. B. Sawyer, clerk; by J. F. O'Beirne, deputy clerk.

82 *Certificate to judgment roll.*

I, Lorenzo S. B. Sawyer, clerk of the circuit court of the United States, of the ninth judicial circuit, in and for the district of California, do hereby certify that the foregoing papers attached together constitute the judgment roll in the cause therein entitled.

Attest my hand and the seal of said circuit court, this 31st day of July, A. D. 1871.

[SEAL.] L. S. B. SAWYER, *Clerk*,
By J. F. O'BEIRNE,
*Deputy Clerk.*

(Endorsed:) Judgment roll filed July 31st, 1871. L. S. B. Sawyer, clerk, by J. F. O'Beirne, deputy clerk.

83 *Bond.*

In the Supreme Court of the United States.

JAMES C. BOLTON
*v.*
JOHN L. VAN REYNEGAN, JONATHAN BICKERSTAFF, R. S. Brown, David Clingan, James Cummings, Peter Gardener, Louis Denos, Francisco Angenetti, Mart. Tierney, Edward Warmouth, and Victor Garnon.

Know all men by these presents, that we, Giuseppe Angellotte, of the town of San Rafael, Marin County, and Edwin Gardner, of the town of San Rafael, Marin County, State of California, as sureties, are held and firmly bound unto James C. Bolton, above named, in the sum of five hundred dollars to be paid to the said James C. Bolton, his executors or administrators. To which payment well and truly to be made, we bind ourselves and each of us, jointly and severally, and our and each of our heirs, executors and administrators, firmly by these presents. Sealed with our seals.

84 Dated this eight day of September, A. D. 1874.

Whereas the above-named John L. Van Reynegan, Jonathan Bickerstaff, R. S. Brown, David Clingan, James Cummings, Peter Gardener, Louis Denos, Francisco Angenetti, Mart. Tierney, Edward Warmouth, and Victor Garnon, have prosecuted a writ of error to the Supreme Court of the United States to reverse the judgment rendered in the above-entitled action by the circuit court of the United States for the district of California:

Now, therefore, the condition of this obligation is such, that if the above named John L. Van Reynegan, Jonathan Bickerstaff, R. S. Brown, David Clingan, James Cummings, Peter Gardener, Louis Denos, Francisco Angenetti, Mart. Tierney, Edward Warmouth, and Victor Garnon, shall prosecute their said writ of error to effect and answer all costs if they shall fail to make good their plea, then this obligation shall be void, otherwise to remain in full force and virtue.

GIUSEPPE ANGELLOTTE. [SEAL.]
EDWIN GARDNER. [SEAL.]

Signed, sealed and delivered in presence of—
JOS. F. O'BEIRNE.

85 UNITED STATES OF AMERICA,
*District of California, ss.*

Guiseppe Angellotte and Edwin Gardener, being duly sworn, each for himself deposes and says that he is a house holder in said district, and is worth the sum of five hundred dollars, exclusive of property exempt from execution, and over and above all debts and liabilities.

GUISEPPE ANGELLOTTE.
EDWIN GARDNER.

Subscribed and sworn to before me this eighth day of September, A. D. 1874.

JOS. F. O'BEIRNE,
*U. S. Commr., Cala.*

(Endorsed:) Approved Sept. 8th, 1874. Lorenzo Sawyer, circuit judge.

Filed 8th Sept., A. D. 1874.

L. S. B. SAWYER, *Clerk*,
By J. F. O'BEIRNE, *Deputy Clerk.*

86 BOLTON
*vs.*
VAN REYNEGAN ET AL.

It is stipulated that this case may be tried by the judge without a jury, trial by jury being expressly waived.

It is also stipulated that all objection to the admission of any deposition on the part of the plaintiff already taken upon the ground of want of the requisite affidavit or notice as to the time of taking the same is waived.

All other objections are reserved, except the want of the signature of the commissioner to said deposition, which is waived. The objection that any of said witnesses live within one hundred miles of the place of trial is also waived.

J. McM. SHAFTER,
*Atty. for Deft.*
B. S. BROOKS,
*Atty. for Plff.*

(Endorsed:) Filed Aug. 19, 1870. L. S. B. Sawyer, clerk.

UNITED STATES OF AMERICA:

Circuit court of the United States, ninth judicial circuit, district of California.

I, Lorenzo S. B. Sawyer, clerk of the circuit court of the United States of the ninth judicial circuit, in and for the district of California, do hereby certify the annexed to be a copy of the original stipulation waiving trial by jury, &c., now on file and remaining of record in my office; that I have compared the same with said original, and that the same is a correct transcript therefrom, and of the whole of said original.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at San Francisco, this 16th day of September, A. D. 1874.

[SEAL.] L. S. B. SAWYER, *Clerk*,
By J. F. O'BEIRNE, *Deputy Clerk*.

(Indorsed:) Sup. court U. S. 1874, Octo. term. No. 728. John L. Van Reynegan vs. Jas. C. Bolton. Addition to record. Filed 14th December, 1874.

87 UNITED STATES OF AMERICA,
*District of California, ss:*

I, Lorenzo S. B. Sawyer, clerk of the circuit court of the United States for the district of California, in the ninth judicial circuit, do hereby certify that the foregoing eighty-five written pages, numbered from 1 to 85, both inclusive, are a true copy of the record and of all proceedings in said cause entitled, and that the same together constitute the return to the annexed writ of error.

Witness my hand and the seal of said circuit court this 16th day of September, A. D. 1874.

[SEAL.] L. S. B. SAWYER, *Clerk*,
By J. F. O'BEIRNE, *Dep. Clerk*.

88 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the judges of the circuit court of the United States for the district of California, in the ninth judicial circuit, greeting:

Because in the record and proceedings and also in the rendition of the judgment of a plea which is in the said circuit court before you, between James C. Bolton, plaintiff, defendant in error, and John L. Van Reynegan, Jonathan Bickerstaff, R. S. Brown, David Clingan, James Cummings, Peter Gardener, Louis Denos, Francisco Augenetti, Mart Tierney, Edward Warmouth, and Victor Garnon, defendants, plaintiffs in error, a manifest error hath happened, to the great damage of the said plaintiffs in error, as by their complaint appears; and it being fit that the error, if any there hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, you are hereby commanded, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States of America, together with this writ, so that you have the same at

the city of Washington, in the District of Columbia, on the second Monday of October next, in the said Supreme Court, to be there and then held, that, the record and proceedings aforesaid be' inspected, the said Supreme Court may cause further to be done therein to correct that error what of right, and according to the law and custom of the United States, should be done.

Witness the Hon. Morrison R. Waite, Chief-Justice of the Supreme Court of the United States, this eighth day of September, in the year of our Lord one thousand eight hundred and seventy-four, and of the Independence of the United States the ninety-ninth.

[SEAL.]

L. S. B. SAWYER,
By J. F. O'BEIRNE,
*Deputy Clerk.*

89 The answer of the judges of the circuit court of the United States for the district of California, in the ninth judicial circuit.

The record and all proceedings of the plaint whereof mention is within made, with all things touching the same, we certify under the seal of our said court, to the Supreme Court of the United States, within mentioned, at the day and place within contained, in a certain schedule to this writ annexed, as within we are commanded.

By the court.

[SEAL.]

L. S. B. SAWYER, *Clerk*,
By J. F. O'BIERNE, *Dep. Clk.*

(Indorsed:) United States Supreme Court. John L. Van Reynegan et al., plffs. in error, vs. James C. Bolton, deft. in error. Writ of error. Filed September 8th, A. D. 1874. L. S. B. Sawyer, clerk, by J. F. O'Beirne, dep. clk.

90 In the circuit court of the United States in and for the tenth judicial circuit.

JAMES C. BOLTON, PLAINTIFF,
*vs.*
J. L. VAN REYNEGAN ET ALS.

UNITED STATES OF AMERICA,
*District of California, ss:*

Rupert Manuel, having been sworn, says that he is over the age of twenty-one years, a clerk in the office of Henry E. Highton, esquire, the attorney for the defendants in the above-entitled action, and competent to be a witness in the said action; that on the eighth day of September, A. D. one thousand eight hundred and seventy-four, at the city and county of San Francisco, State of California, within the circuit and district aforesaid, he personally served the citation hereunto attached in the said action to the Supreme Court of the United States upon B. S. Brooks, esquire, the attorney for the plaintiff in said action, personally, by exhibiting to the said B. S. Brooks the original of said citation, and by delivering to and leaving with the said B. S. Brooks a true and full copy thereof.

RUPERT MANUEL.

Subscribed and sworn to by me this sixteenth day of September, A. D. 1874.

L. S. B. SAWYER,
*U. S. Comr., &c.*

91 UNITED STATES OF AMERICA, *ss.*

To James C. Bolton, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States of America, to be held at the city of Washington, in the District of Columbia, on the second Monday of October, A. D. 1874, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the district of California, wherein John L. Van Reynegan, Jonathan Bickerstaff, R. S. Brown, David Clingan, James Cummings, Peter Gardener, Louis Denos, Francisco Augenetti, Mart Tierney, Edward Warmouth, and Victor Garnon are plaintiffs in error, and you are defendant in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness the honorable Morrison R. Waite, Chief-Justice of the Supreme Court of the United States of America, this eighth day of September, A. D. 1874, and of the Independence of the United States the ninety-ninth.

[SEAL.]

LORENZO SAWYER,
*U. S. Circuit Judge, Ninth Circuit.*

92 Service of a copy of the within citation admitted this day of September, A. D. 1874.

*Attorney for Defendant in Error.*

(Indorsed:) 190. United States Supreme Court. John L. Van Reynegan et al., plffs. in error, vs. James C. Bolton, deft. in error. Citation. Filed 9 September, 1874, L. S. B. Sawyer, clerk.

(Indorsement on cover:) No. 237. John L. Van Reynegan, Jonathan Bickerstaff, R. S. Brown, David Clingan, James Cummings, Peter Gardner, Louis Denos, Francisco Augnetti, Mart Tierney, Edward Warmouth, & Victor Garnon, plaintiffs in error, vs. James C. Bolton. California C. C. U. S. Filed 16th November, 1874.

REC. 237—3

IN THE

# Supreme Court of the United States.

No. 30.

**JOHN L. VON REYNEGAN ET AL.**

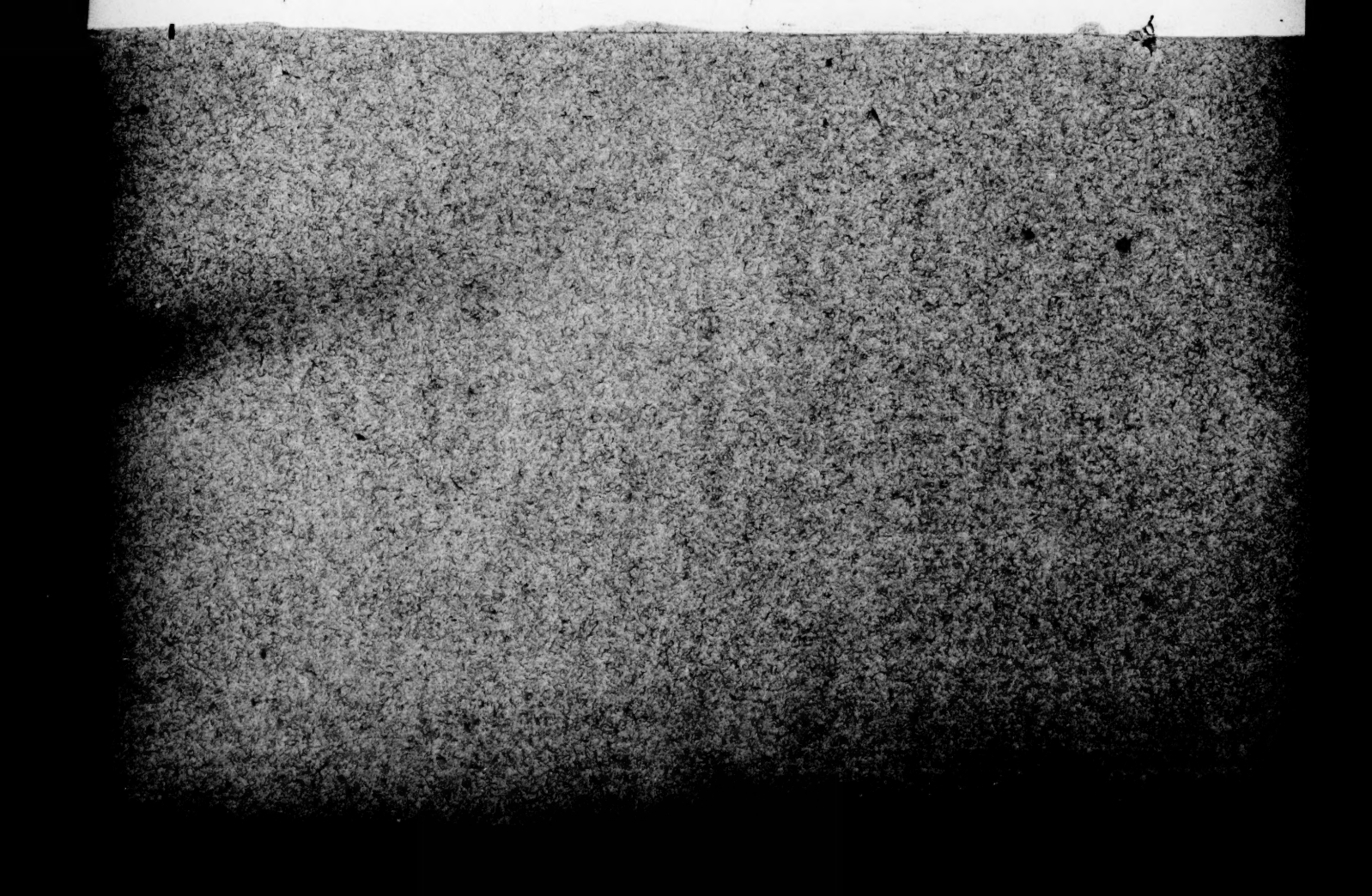
*vs.*

**JAMES C. BOLTON.**

*In Error to the Circuit Court of the U. S. for the District of California.*

# APPELLANT'S POINTS AND AUTHORITIES.

Joseph L. Pearson, Printer, 9th and D streets, Washington.



IN THE

# Supreme Court of the United States.

## No. 30.

JOHN L. VON REYNEGAN ET AL.

*vs.*

JAMES C. BOLTON.

In error to the Circuit Court of the U. S. for the District of California.

## *Appellant's Points and Authorities.*

The history of the case, and our position, is—

First. That Juan Reed received a valid grant from Mexico in the year 1835, *to the extent of one league of land*, and that the rights of property were not impaired by the change of sovereignty and jurisdiction, and they were fully secured by treaty stipulation.

Second. In order to maintain the rights of such Mexican land grants in California, Congress of the United States passed an act, which was approved March 3, 1851, which created a board of land commissioners to ascertain and settle such claims in California. That such proceedings were afterwards had. That said grant and claim were confirmed on the 13th day of June, A. D. 1854, by said board.

An appeal having been taken to the U. S. District Court for the Northern District of California, that court, on the

14th day of January, A. D. 1856, entered a decree affirming the decree of said board as to the validity of said grant.

Hoffman's Reports, page 74.

No appeal being taken, the said decree became final.

A decree that has become final can not be disregarded or deviated from in a subsequent proceeding taken for its execution.

See Grisar vs. McDowell, 6 Wall., 376.

If erroneous in either particular, the remedy was by appeal.

2 Wall., 448.

The first question before the court is the construction of the decree of final confirmation; that is, how much land was confirmed?

I quote the language used in the record of this case, page 17, article 70: "Ordered, adjudged, and decreed that the claim of said appellees is a good and a valid claim, and that said claim be, and the same is hereby, confirmed to the extent and quantity of *one square league*, it being the same land described in the grant, and of which the possession was proved to have been long enjoyed."

This is a clear adjudication that there was but one league of land in the grant, and of which possession was given, as plain as the English language can make it, and leaves no room for comment.

The decree itself being clear and precise, does not refer to the rough daub called "Deseno," or to the record of juridical possession, for the purpose of rendering uncertain that which the decree makes certain.

U. S. vs. Billings, 2 Wallace, 448.

The second point is, were these plaintiffs in error in this action in the unlawful possession of the land described in the complaint; as to the plaintiff, James C. Bolton, at the commencement of this action, or in the unlawful possession of any of the land described in the said decree of final confirmation, as designated and segregated by the proper au-

thorities of the United States, as this court has no authority to inquire into this matter any farther than that in this proceeding.

We quote from the printed record of this case, page 18, article 71: "A survey having been made and approved (*September* 19, 1859) by the Surveyor-General of the United States for the State of California, in such a manner as to limit the amount to one square league in quantity, (*simply corresponding precisely with the decree of final confirmation,*) and said survey, *so made, excluded the land described in the complaint in this action.*"

Under this plain statement of facts what more could be asked of any peaceable, law-abiding citizen of the United States than to abide by the decision of those august tribunals? To disregard them in this way would be a source of discord to any civilized government.

We claim the court below erred in rendering a judgment in favor of the plaintiff, James C. Bolton, and against said defendants therein mentioned. First, because, if there was any dissension, the remedy was by appeal—not by a collateral attack in this way.

Second. Because defendants in the court below were outside the boundaries of the grant, as designated by the proper officers of the government of the United States at the commencement of this action.

Third. Because plaintiff's cause of action could not arise until within five years after the final approval of the survey by the proper officers of the government of the United States, as against a peaceful, quiet, adverse possession under the act of the legislature of the State of California, passed April 11, 1855, page 109, and as amended by the act of April, 1863, page 325.

Fourth. It is a universal principle of law, that where power or jurisdiction is delegated to any public officer or tribunal over a subject-matter, and its exercise is conformed to his or their discretion, the acts so performed are binding,

Under the maxim precept rule of law, the defendants in the court below were in the *lawful*, legal, legitimate possession of said land, at the commencement of this action, so far as said Bolton was concerned.

The plaintiff's right of action does not accrue until the statutes of limitation commence to run, as against a peaceful, quiet, adverse possession. Under the act of April 11, 1855, when properly construed, it gives a party five years from the time of entry to bring his action on all individual lands except lands claimed by virtue of Mexico, of which he may bring his action within five years from the time of final confirmation of the survey by the government of the United States. During the pendency of such proceedings, plaintiffs cannot maintain an action against a party in the peaceful, quiet, adverse possession.

A different construction would necessarily make the act unconstitutional; for to give one party an indefinite time to commence his action, because his claim originated from Spain or Mexico, as in this case, already 18 or 19 years have elapsed since the survey was made and approved by the Surveyor-General. To give a construction so as to allow such claim to run five hundred years more, on that principle such a construction would be unconstitutional.

No action for the recovery of real property, or for the recovery of the possession thereof, shall be maintained, unless it appears that the plaintiff, his ancestor, predecessor, or grantors was seized or possessed of the premises in question within five years before the commencement of such action; provided, however, that an action may be maintained by a party claiming such real estate, or the possession thereof, under title derived from the Spanish or Mexican governments or the authorities thereof. Then such action shall be commenced within five years thereafter final confirmation; final confirmation means the time patent issues.

Johnson vs. Van Dyke.
20 Cal., page 227.

Under the act of the legislature of the State of California, approved April 11, 1855, (page 109, section 3,) "*Any peaceable entry upon real estate shall be deemed sufficient and valid as a claim, unless an action be commenced by the plaintiff in ejectment within one year after the making such entry.*" This only means that the defendant settler acquires such a right as to compel a plaintiff to show a better title, because he is no longer a trespasser. Even if the plaintiffs have a better title, it only compels the plaintiff to show his better title, and any peaceful, quiet, adverse possession of land over one year is prima facie evidence of right.

4 Cal., 67–70.

The policy of this state as derived from her legislature is to permit settlers to occupy the public lands, and acquire the right of undisturbed enjoyment against all the world, except the true owner.

5 Cal., 395.

In an action of ejectment, the plaintiff must recover on the strength of his own title, and cannot found his claim on the insufficiency of defendant's title.

1 Cal., 299.

In an action for the recovery of land, if the plaintiff have no title, the defendant cannot be ousted.

1 Cal., 119.

The first exception is in the 3d section of the said act of 1855: "*Or within five years from the time when the right to bring such action accrued.*"

It is unnecessary to comment on this exception, because it does not refer to Spanish grants.

The next exception is the one that is applicable to this case, and that is in these words: "*Or within five years after the final confirmation by the United States of any title derived from Spain or Mexico.*"

Under the proper construction of this law the plaintiff should have brought his action first within one year from the entry of defendant, (for the defendants had no standing

until then, under section 3 of said act of 1855,) or, if not, he is barred under the disability of the title as incomplete. Why? Because the proper officers of the government of the United States are investigating the title, and the extent of the boundaries are inchoate.

The act of 1855 was repealed by the act of April 18, 1863, page 325, simply and explantory explanation of the meaning of the words "final confirmation," it says: "Final confirmation of Mexican grants shall, within the meaning of this act, be the patent or final determination of the official survey by the proper officers of the government of the United States."

Again, printed records, page 18, art. 70, "that the lands embraced within the external boundaries of the said grant, and within the boundaries of the said juridical possession, is some *fifteen hundred acres more than one square league.*"

Such facts plainly imply that the decree of final confirmation was incorrect, and in substance attempt to correct it. The very facts on which he founds his judgment is a collateral attack on the decree of final confirmation.

Let me draw your attention to the complaint, and there will be found that it sets forth and describes by specific metes and bounds a tract of land only embracing 2,000 acres; but the court steps outside of the complaint and adds one league, or 4,400 acres, more. How could the court below find the extent of juridical possession beyond what appears in the pleadings?

In conclusion, I draw your attention to the following point for the purpose of showing what inconsistency there is in attempting to establish the boundaries of Mexican grants in this way; and to show the evil effects of such proceeding, I call your attention to the case of J. C. Bolton vs. I. Kashaw, in the U. S. circuit court, case No. 189. That was an action of precisely the same principle as this, by the same plaintiff, and in the same court, and concerning the same ranch, *Corte de Madera del Presidio*, which land was situated to the south of the one league, official survey

of the ranch, and outside thereof. There the court found that there was about 400 acres more than one league. Judgment was entered accordingly March 16, 1867.

The land in controversy in this action is situated and bounded on the north of the official survey.

Again, in the suit of Juan Reed's Heirs vs. the same defendants as in this case, commenced in the Seventh District Court of California, the plaintiffs recover judgment for about 400 acres to the west of the land described in the judgment of this action.

Another matter is pending in the executive department, wherein the claimant is asking for about 2,000 acres more, still farther to the north of the land described in this action; and also an additional quantity on the south of the official survey, of about 200 acres, making in excess over the quantity confirmed by the decree of final confirmation, between 3,000 and 4,000 acres.

In all these cases, this is cited as their high authority: Jas. C. Bolton vs. Van Reynegan et als., U. S. Circuit Court.

It is a settled rule of law that where a plaintiff in an action for the recovery of Mexican grant land relies upon a final confirmation, he cannot recover until after the patent issues; otherwise it is obvious that any claim, even the most worthless in character, may be asserted in an action of ejectment, so long as proceedings to obtain its recognition at the hands of the government, even though uniformly unsuccessful, can be kept on foot. Accordingly, it may be conceded, as against the right to maintain an action while such proceedings are pending before the proper officers of the U. S. government, and especially when the defendants are outside of the boundaries designated by such officers. Hence the act of 1855, as amended by the act of 1863, bars such actions on Spanish or Mexican grants until within five years after the patent issues, unless the action be commenced within one year, as required.—(Sec. 3, act of 1855.)

In the case of Aurrecoechea et al. vs. Hinckley, No. 3,981, Supreme Court of California, filed November 11, 1874, the principle is well established that it is not the fact alone that the claimant is at the time actually seeking confirmation at the hands of the government which renders the statutes of limitation inapplicable pending such proceedings.

In consequence of the case not being reported, we cite the entire opinion:

[Filed Nov. 11, 1874.]

AURRECOECHEA ET AL.
*vs*
HINCKLEY.

The Mexican claim, under which plaintiffs deraign title, was not finally confirmed when the act of April 18, 1863, took effect, (Stats. 1863, p. 325,) nor had a patent for the land been issued when this action was brought. The defendant was in the adverse possession more than five years before the commencement of the action. If the statute of 1863 is not in conflict with the Constitution of the United States, or with a treaty, the defendant was entitled to judgment. No argument is made in the brief upon the subject of such conflict.

Judgment and order reversed and cause remanded.

McKINSTRY, *J.*

We concur: NILES, *J.*
CROCKETT, *J.*

Concurring opinion of Wallace, *C. J.*:

1. I concur in the opinion and in the judgment. To prevent possible misunderstanding, however, it is perhaps material to observe that the plaintiffs here have no patent nor any determination of the survey under the act of Congress of June 14, 1860. They have, therefore, no final confirmation of title.—(Johnson vs. Van Dyke, 20 Cal., 225; Davis vs. Davis, 26 Id., 46; Beach vs. Gabriel, 29 Id., 580; Mahoney vs. Van Winkle, 34 Id., 448.)

The possession of the defendant, though held under Wilkinson and Pacheco, was, nevertheless, adverse as to the title of the plaintiffs.—(McManus vs. O'Sullivan, January term, 1874, and cases there cited.)

2. At the commencement of the action, the defendant had been in the continuous adverse possession of the premises for more than five years, and the action was, therefore, barred by the sixth section of the act of 1855 as amended by the first section of the act of April 18, 1863, p. 326, unless the right to bring the action was saved to the plaintiffs under the doctrine of the case of Gardiner vs. Miller, 47 Cal., 570, and the authorities and principles of law there referred to.

3. It is settled by the case of Gardiner vs. Miller, supra, that when a plaintiff in an action relies for recovery upon a final confirmation—that is [since the repeal of the act of June 14, 1860,] a patent—the limitation prescribed by the statute of April 18, 1863, would commence to run only at the time of the issuance of the patent, and that the possession of the defendant for any period of time antecedent to its issuance would not operate to bar the action. The patent, in such case, while it establishes the validity of the original claim upon which it was issued, also protects the holders of the claim from the operation of the statute of limitations while proceedings to obtain the patent were pending in the tribunals of the federal government. Unless the patent have actually issued, however, no such protection against the operation of the statutes of limitations enacted by the state can be afforded to the claimant; for, until its issuance, the claim itself cannot be recognized as one entitled to protection at the hands of the federal government, or brought within the obligations assumed by the government by the treaty of cession. It may be a claim utterly worthless in its character and one the validity of which the government at the latest moment may refuse to recognize. It is not, therefore, the mere fact that the claimant is, at the

time, actually seeking confirmation at the hands of the government, which renders the statute of limitations inapplicable, pending such proceedings, but the fact that he has been successful and has obtained the final confirmation he sought. Otherwise, it is obvious that any claim, even the most worthless in character, may be asserted in an action of ejectment, so long as proceedings to obtain its recognition at the hands of the government, even though uniformly unsuccessful, can be kept on foot. We accordingly said, in Gardiner & Miller, supra: "It may be conceded that as against the right to commence an action upon an unconfirmed grant, it was competent to set the statute of 1863 in motion from the time of its enactment," etc.

As observed already, the claim of the plaintiffs here is of that character, and in its present condition the statute of limitation, therefore, constitutes a bar to the action.

WALLACE, *C. J.*

—(San Francisco Law Library, Supreme Court Decisions, Scrap Book No. 4, page 8.)

We, therefore, ask that the judgment be reversed and cause remanded, with instruction to the court below to render judgment for defendants and their costs, and damages for the detention of the property, and for such other relief as may be deemed proper and just.

JOHN L. VAN REYNEGAN,
JONATHAN BICKERSTAFF,
R. S. BROWN,
DAVID CLINGAN,
JAMES CUMMINGS,
PETER GARDNER,
LOUIS DENOS,
FRANCISCO AUGENETTI,
MART. TIERNEY,
EDWARD WARMOUTH, AND
VICTOR GARNON,
*Plaintiffs in Error.*

UNITED STATES SUPREME COURT.

J. L. VAN REYNEGAN ET AL.,
Plaintiffs in Error,
*vs.*
JAMES C. BOLTON,
Defendant in Error.

It is stipulated that the above cause be submitted on briefs, to be served as follows: by plaintiff in error, in two days from date. Defendant in error to answer in thirty days thereafter, and plaintiff in error ten days to reply, unless Mr. Peter Gardner should be in city of Washington during the term, in which case it may be argued orally, at the option of the defendants in error.

San Francisco, September 3d, 1877.

PETER GARDNER,
FRANCOIS ANGOMY,
LOUIS DENOS,
EBENEZER WARMOUTH,
J. BICKERSTAFF,
*Plaintiffs in Error.*

B. S. BROOKS,
*Attorney for Defendant in Error.*

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